



Signed and Filed: August 11, 2011

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 08-30989 TEC
)	
SAND HILL CAPITAL PARTNERS III,)	Chapter 7
LLC, a California limited liability)	
company,)	
)	
)	
Debtor.)	
)	
JANINA M. HOSKINS, Trustee of the)	Adv. Proc. No. 10-3080 TC
Bankruptcy Estate of Sand Hill)	
Capital Partners III, LLC, a)	
California limited liability)	
company,)	
)	
Plaintiff,)	Date: August 12, 2011
)	Time: 11:00 a.m.
vs.)	Ctrm: Hon. Thomas E. Carlson
)	235 Pine St., 23rd Fl.
MARY THORNHILL, as Trustee of the)	San Francisco, CA
Wirth 1984 Revocable Trust and as)	
successor,)	
)	
Defendant.)	
)	

**TENTATIVE RULING RE MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER
JURISDICTION AND MOTION TO STRIKE JURY DEMAND**

1. Defendant's motion to dismiss for lack of subject-matter jurisdiction should be denied. This court, as a unit of the district court, clearly has both arising-under and related-to jurisdiction under 28 U.S.C. § 1334(b). Stern v. Marshall, 131 S.Ct. 2594 (2011) has nothing to do with whether the district court

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1 has subject-matter jurisdiction, but addresses only which judicial
2 officer may exercise certain powers.

3 2. Plaintiff's motion to strike Defendant's jury demand should be
4 denied. In asserting the right of set-off or recoupment to reduce
5 her liability to the estate, while expressly declining to seek
6 affirmative relief against the estate, Defendant has not caused
7 this action to become a part of the claims-allowance process.

8 Stern v. Marshall interprets narrowly what claims to augment the
9 estate become part of the claims-allowance process. Following
10 Stern, a right of set-off or recoupment asserted by a defendant in
11 an action brought by the estate, becomes part of the claims-
12 allowance process only if the defendant seeks an affirmative
13 recovery from those assets of the estate that exist apart from the
14 action in which the defense is raised.

15 3. By seeking to preserve her jury demand on the basis that she is
16 not seeking affirmative relief against the estate, Defendant is
17 estopped from later amending her complaint to seek such relief.

18 4. This court will conduct all pretrial proceedings as specified
19 in Sigma Micro Corp. v. Healthcentral.com, 504 F.3d 775 (2007).

20 ****END OF TENTATIVE RULING****